THE HON'BLE SRI JUSTICE N.R.L. NAGESWARA RAO

APPEAL SUIT No.2817 OF 1996

JUDGMENT:-

The defendants in O.S.No.66 of 1989 on the file of the Court of Subordinate Judge, Mahaboobnagar, are the appellants herein.

2. The suit was filed by the plaintiff for recovery of a sum of Rs.66,000/- contending that he was a successful tenderer and a contract for construction of a residential quarter of the Chairman, Zilla Parishad at Mahaboobnagar, was taken up by him and an agreement was entered on 06.05.1986 for cost of Rs.4,00,000/- and the work has to be completed by 05.05.1987. The foundation was laid on 27.05.1986 by the Minister for Panchayat Raj, and site was handed over to the plaintiff. The contract was given for a sum of Rs.3,60,000/-. Some amount was kept for doors, windows etc., separately. The plaintiff has completed the work up to basement level and the value of the work completed is Rs.70,000/-. As he was not provided with the approved plans and with the doors and windows etc., he could not further take up the work. The plaintiff intended to purchase the same at open market and the 2nd defendant asked the plaintiff to purchase the same at a particular rate. For which the plaintiff was not agreeable. Repeatedly the plaintiff has been informing the defendants about the necessity of the giving the plan and also the material for further construction. But, however, the 2nd defendant has cancelled the contract on 27.01.1987, which was received by the plaintiff on 17.02.1987. The earnest deposit and other deposits were also forfeited. Therefore, the plaintiff has filed the suit for recovery of the amount which consists of the value of the work done by him as Rs.48,000/- and interest thereon at 18% per annum from 12.05.1987 to 18.06.1989.

3. The 2nd defendant contended that the site was handed over to the plaintiff on 05.05.1986 immediately after the agreement and the plaintiff has to maintain rate of progress in the construction work and the plaintiff has executed the work to a value of Rs.67,935/- up to 27.09.1986, which comes to 18.56% as against the agreement prescribing 30%. The approved plans were

given to the plaintiff at the time of the tender itself. Further-more, the supply of the doors and windows is not covered by the agreement and the plaintiff should have continued the work. In spite of repeated advises, the plaintiff has not completed the work and consequently the tender was cancelled and the plaintiff himself is due a sum of Rs.33,752/- to the department.

4. Considering the above pleadings necessary issues have been framed by the Court below and after considering the material evidence available on record, the Court below has passed the decree for Rs.66,000/- and did not agree with the counter claim of the defendants. Aggrieved by the said judgment, the present appeal is filed.

5. The points that arise for consideration are:

1) Whether the plaintiff is not entitled for the suit amount as he committed default?

2) Whether the 2nd defendant is entitled to cancel the contract?

3) Whether the judgment and decree passed by the Court below is legal and sustainable?

6. **POINTS**:

Though there is a dispute as to whether the property was handed over on 05.05.1986 or 27.05.1986, the fact remains that the plaintiff has constructed the building up to the basement level. As per the evidence of DW.1, who supervised the work, the plaintiff has to complete the work at the rate of 15% in two months from the date of agreement. On 24.07.1986 the first measurement was recorded and the second measurement was recorded on 27.09.1986, by which date he carried 18.5% of the quarter work worth of Rs.67,935/- which includes the cost of the cement supplied by the department. It is the evidence of DW.1 that the construction of compound wall, electrification, wood work were kept under lumpsum contract. The evidence of DW.1 clearly goes to show that the construction of the basement was completed even prior to the time fixed under the contract. The lower Court found that by 29.07.1986 the basement itself was completed. Therefore, relying on the evidence of DW.1 the Court found that the plaintiff has completed 30% of the work and there was no fault on the part of the plaintiff. The lower Court also, after appreciation of the evidence, clearly found that the plan was not supplied. Evidently, the

original tender does not contain the copy of the plan and the Court below from the evidence of the defendants has specifically held that the plan was not part of the tender and it was not supplied. Therefore, it cannot be said that the plaintiff has committed the default.

7. It is an admitted fact that repeatedly the plaintiff was asking for the material and for a longer time, no reply was given and the plaintiff was directed to purchase the wood material and the price quoted by the plaintiff and the 2nd defendant are different. Therefore, it is quite clear that the lower Court has considered that there is no fault of the plaintiff and the cancellation of the contract is not valid.

8. Evidently, to the extent of the work done by the plaintiff, he is entitled for the amount. The basement was filled with earth and there were labour charges and watchman charges, which form part of the claim. The plaintiff will be entitled to the value of the work completed by him when the contract was not legally cancelled. Therefore, in view of the above circumstances, I find that the judgment of the Court below does not call for any interference so far as the claim of the plaintiff is concerned.

9. The Court below has granted interest at 18% per annum from 12.05.1987 to 18.06.1989 on the amount of Rs.48,000/-, which was found due and subsequent interest is also granted at 18% per annum which appears to be excessive. Therefore, the decree of the Court below is modified to the extent that the plaintiff will be entitled to a sum of Rs.48,000/- with interest at 12% from 12.05.1987 to 18.06.1989 and at the same rate till the date of realization.

Accordingly, the appeal is allowed in part. No costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

JUSTICE N.R.L. NAGESWARA RAO

Date: 28.11.2012
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